

DUNCAN MILLER

IBLA 73-332, 73-333

Decided May 21, 1973

Appeals from separate Bureau of Land Management decisions rejecting applications to suspend oil and gas leases M 039865 and U 040086.

Appeals dismissed.

Oil and Gas Leases: Generally--Oil and Gas Leases: Suspensions

An oil and gas lessee must comply with all the lease terms, including the operating regulations, at his own expense.

Rules of Practice: Appeals: Generally

An appeal will be dismissed where there is no justiciable issue or where the appeal is moot.

APPEARANCES: Duncan Miller, pro se.

OPINION BY MR. FRISHBERG

By separate identical instruments, dated February 22, 1973, Miller protested to the appropriate Bureau of Land Management offices and requested suspension of oil and gas leases M 039865 and U 040086. He asserted that "the word 'ecology' was not meaningful when the lease was issued." He requested a suspension of the lease terms to provide some sort of adjustment in order that he should not have to bear the full costs of compliance with operating requirements for the protection of the environment; he prayed that the lease terms be suspended. Neither petition was favorably considered by BLM.

Carrying his quest for relief to this Board via the appeals route, appellant urges that he is entitled to be freed from the burdens with which he has been saddled since the leases issued and which are now necessary to comply with the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq. (1970).

Each of the leases was issued effective March 1, 1964. Therefore, the annual rentals for the tenth year were due and payable on or before the anniversary date, March 1, 1973. The rental for the tenth year has not been paid for either lease. Even while the leases were

in the last two weeks of the ninth year, no action had as yet been taken towards drilling or other operational activity. Thus, appellant would not be entitled to a suspension of operations and production under 43 CFR 3103.3-8. Furthermore, a petition for relief under that regulation must be filed with the Regional Oil and Gas Supervisor of the Geological Survey--not with the Bureau of Land Management.

Compliance with law, regulations, stipulations, and conditions, including those pertaining to environmental protection and restoration, is an essential ingredient of the terms of an oil and gas lease. 30 U.S.C. § 189 (1970); United States v. Forbes, 36 F. Supp. 131 (1949) aff'd 125 F.2d 404, (9th Cir. 1942) aff'd 127 F.2d 862 (1942). The burden, including its financial aspects, of complying with environmental protection provisions, is the sole responsibility of the lessee. Appellant was previously informed to this effect. Duncan Miller, 10 IBLA 133 (1973); see John Oakason, 3 IBLA 148 (1971). In any event, since there was no drilling or development on the leaseholds appellant was never called upon to expend money for environmental protection. Nor can he be heard to complain of possible future contingencies which will never come to pass. Inasmuch as there has been no production on either lease, he is not entitled to a suspension under the cited regulation.

Under the circumstances of this case the question on appeal is rhetorical. Appellant has not expended moneys for which he seeks recompense or relief. And, since the leases lapsed for nonpayment of the annual rentals due on March 1, 1973, 30 U.S.C. § 188 (1970), he will not be obliged to expend funds for environmental protection purposes in connection with the leases. It follows that there is no justiciable issue, and the appeals are moot.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeals are dismissed.

Newton Frishberg, Chairman

We concur:

Douglas E. Henriques, Member

Edward W. Stuebing, Member

